In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-99

PARLANE SPORTSWEAR CO., INC., PETITIONER

v.

F. DAVID MATHEWS, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR THE FEDERAL RESPONDENT IN OPPOSITION

Petitioner contends that it is entitled to relocation assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 84 Stat. 1894, 42 U.S.C. 4601, *et seq.* ("Relocation Assistance Act").

Petitioner, a clothing manufacturer, leased three floors in a building which respondent Tufts University, a private educational institution, acquired in 1969. Tufts was subsequently granted substantial

sums by the National Institutes of Health, an agency of the Department of Health, Education, and Welfare, to expand its teaching facilities and establish a Cancer Research Center. Tufts wanted to use the space leased by petitioner for the cancer project. Since petitioner's lease had expired, Tufts called upon it to vacate; when petitioner refused to do so, Tufts brought eviction proceedings. Tufts recovered possession of all three floors and is currently conducting in them activities for which it had received grants (Pet. App. B, p. 30).

In August 1971, petitioner applied for relocation assistance from HEW under the Relocation Assistance Act. The Secretary determined that petitioner did not qualify for such assistance. Petitioner then brought this action in the United States District Court for the District of Massachusetts seeking a declaration that it was entitled to benefits under the Act. The district court dismissed the action (Pet. App. A, pp. 23-28), and the court of appeals affirmed (Pet. App. B, pp. 29-32; 513 F. 2d 835). Both courts held that the Act does not provide relocation assistance to persons who are displaced by private institutions receiving federal assistance.

The decision of the court of appeals was correct, does not conflict with other decisions (Pet. 5), and is consistent with the language, history and administrative construction of the Relocation Assistance Act.

The operative language of the Act authorizes federal displacement payments only when real property is acquired "for a program or project undertaken by a Federal agency" (42 U.S.C. 4622), "by a State agency and furnished as a required contribution incident to a Federal program or project" (42 U.S.C. 4627), or, "by a State agency at the request of a Federal agency for a Federal program or project" (42 U.S.C. 4628). There is no provision for payments when property is acquired by a private institution, like Tufts, to carry out a project initiated and controlled by it, but for which it receives federal assistance. Accordingly, the Secretary's regulations specify that relocation payments are not available with respect to federally assisted projects of private entities. 45 C.F.R. 15.6. That regulation provides:

> This part does not apply to federally assisted projects of those entities, such as private entities, that do not meet the definition of a State agency in § 15.4(s), except when such an entity is acting as an agent or contractor of a State agency, or of the Department, in the discharge of its responsibilities.

Tufts is not acting as a contractor or agent of the federal government within the meaning of the regulation simply because it received a grant. As the court below held (Pet. App. B, p. 31, n. 1), the regulation is limited to real property acquired at the request of a federal agency, to be used as a public facility in a federal program. Tufts' building re-

mains as much a private facility of the University as when petitioner occupied it.

The court of appeals correctly observed that nothing in the legislative history describing the Act's scope "approximate[s] the arrangement here, which Tufts initiated and administers" (Pet. App. B, p. 31). The House Committee Report referred only to "public works projects" and "public improvement programs" such as public buildings, facilities or services. H.R. Rep. No. 1656, 91st Cong., 2d Sess., pp. 1, 3 (1970). Representative Ryan, speaking on the floor of the House of Representatives, correctly noted (and without contradiction) that the legislation did "not cover displacement arising from construction by private institutions—such as schools and hospitals—even though they too, may be receiving Federal financial assistance." 116 Cong. Rec. 41254 (1970). But his contemporaneous proposal to fill this deliberate omission (H.R. 609, 91st Cong., 1st Sess. (1969)) was not reported out of committee.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

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